Bills 207, 551. It is entirely safe to say that a person taking such paper, should not without some adequate excuse retain such paper without action, beyond such time as would give him reasonable opportunity to inform himself without inconvenience, or a neglect of other business to attend to it. The necessity for promptness exists in all cases, and where it appears there has been any delay beyond what was reasonably adequate under the circumstances, to enable the party to inform himself, he should not recover. And there should be some care in the taking as well as afterwards.

In the present case, it appeared from plaintiff's testimony that he kept this money on his person more than five months, without at any time attempting to obtain the opinion of any banker upon it, although several times where he had the means of doing so. It certainly can never be contemplated that a person, whatever may be the extent of his dealings, can keep alive the liability of another upon paper taken from him, without some use of his opportunities for information. And when it affirmatively appears that he has neglected his opportunities, there is no question left for a jury. And in such cases, therefore, the facts being clear, the result is one of law.

The court should have granted the request to that effect, and it becomes unnecessary to decide the question whether the payment when honestly made and without suspicious circumstances would have been absolute, if diligence had been used to discover the quality of the paper.

Supreme Court of Mississippi.

LASLY *v.* PHIPPS.

The obligation of a contract is the legal duty of performing it according to its terms.

There can be no legal duty without a remedy or means of enforcing it; for without such remedy a contract is a mere imperfect obligation, depending for its performance upon the will of him from whom performance is expected. Parties therefore, who enter into contracts, must be considered as looking to the municipal law for a remedy to secure performance, and this law thus enters into and forms a part of the obligation.

Whilst a state, in the exercise of its undoubted power to prescribe forms of action and modes of procedure, may alter and modify the remedy as it existed at the time a contract was made, yet it is under a duty imposed by that clause of

the Federal Constitution which prohibits the states from passing laws impairing the obligation of contracts, if it interfere at all, to leave in existence a remedy as efficient and substantial as that which subsisted when the contract was made : For the remedy being necessarily inseparable from the obligation, any law which clogs it with conditions and restrictions which materially impair its efficiency, and which did not exist when the contract was made, impairs necessarily the obligation.

The right to seize and sell by judicial process a debtor's property in satisfaction of a judgment against him, is a material part of the remedy for the enforcement of the contract on which the judgment is founded ; and any law of a state which materially increases the amount of property exempt by law from execution over the amount allowed when the contract was made, impairs the remedy materially, and is therefore prohibited by the Federal Constitution.

The exemption law of Mississippi passed in 1865 which increased the homestead exemption from 160 acres of land, not exceeding $1500 in value, to 240 acres regardless of its value, is, when applied to debts created before its passage, in violation of that clause of the Federal Constitution which prohibits states from passing laws impairing the obligation of contracts.

THE case sufficiently appears in the opinion of the court, which was delivered by

SIMRALL, J. [After disposing of some minor points].—It remains to be considered whether the homestead shall be assigned under the law in force at the date of incurring the debts, or under the subsequent statute of 1865. Several cases are before us involving this question which have been ably argued, viz. : *Pennington* v. *Seal et al.*, *Youngue et al.* v. *Carroll, Hoy & Co.*, and *Gallagher* v. *McCauley*. Aware of its importance and delicacy, we have given to it careful consideration. The later statute having largely increased the exemption, the argument on the one side is that it impairs the obligation of the contract, and is therefore void and inoperative as to all debts existing at the date of its enactment; whilst for the debtor it is claimed to be legitimate legislation which affects the remedy and does not disturb the contract.

The restrictions on the legislative power of the states contained in the Federal Constitution, are founded on the motive of shielding the people in their persons and property from the effect of legislation arising and impulse caused by unusual emergencies, to which communities like individuals are exposed. They were said by Chief Justice MARSHALL to be like "a bill of rights for the people." No state shall pass any bill of attainder, *ex post facto* law or law impairing the obligation of contracts. The Constitution being the

supreme law, and the Supreme Court of the United States its ultimate and authoritative expounder, we must refer to the judgments of that tribunal for the obligatory rule to control our decision. Upon no clause of that instrument has there been so much discussion, as has been expended to determine what is the obligation of contracts, and what must be the character of the state legislation which impairs it. All would agree that a state could not abrogate a contract made between two individuals, legal when entered into. The debatable ground begins most generally when a law proposing to regulate the remedy is challenged for trenching upon the right. It has never been decided that the legislative power extends to a modification of the remedy. This was distinctly stated in the early case of *Sturgis* v. *Crowninshield*, 4 Wheat. 122. It is necessary, or there can be no improvement and amelioration of the remedial machinery of the law. The impossible task has been, and is, to define the limits beyond which remedial legislation may not go without infringing upon the "right." In *Green* v. *Biddle*, 8 Wheat. 1, it was said that a law which clogs the remedy by conditions and restrictions tending to diminish the value and amount of the thing recovered, impairs the right. This language was suggested by the occupant claimant laws of Kentucky, the validity of which was the subject of controversy. It was further said that if the new remedies materially impair the right, it is as much a violation of the compact as if they overturned the right. Chief Justice TANEY in *Bronson* v. *Kinsie*, 1 How. 311, concurred fully in the rule as thus stated, adding that the "remedy is the part of the municipal law which protects the rights and the obligation by which it enforces and maintains it." "It is this protection which the (inhibitory) clause of the Constitution was mainly intended to secure." These principles were again affirmed in *Curran* v. *The State of Kansas et al.*, 13 How. 319, and *Freeman* v. *Howe et al.*, 24 How. 460. Without citing all the cases which consider the subject, we come to the later ones which hold a sterner and more definite tone. Thus, in *Van Hoffman* v. *City of Quincy*, 4 Wallace 550, it was declared that laws which subsist at the time and place of making the contract which affect its validity, construction, discharge and enforcement, enter into and form a part of it, as much so as if they rested on the basis of a district agreement. In *Planters' Bank* v. *Sharp*, 6 How. 327, remarking on the point of how far remedial legisla-

tion may go, the court say, "It is not a question of degree; it shall not impair the value of the contract at all." In *White* v. *Hart*, 13 Wallace 653, the doctrine enunciated in *Van Hoffman* v. *City of Quincy* is reaffirmed, quoting with approbation the words of the former judgment in which it is stated. In the last reported case of *Gunn* v. *Barry*, 15 Wallace (1872), the court use this language: "The legal remedies for the enforcement of a contract, which belongs to it at the time and place where it is made, are a part of its obligation. The state may change them provided the change involves no impairment of a substantial right. If the act fall within the category last mentioned, it is to that extent utterly void." Quite as emphatic is the case of *Walker* v. *Whitehead* in the same court, not yet reported.

We have quoted thus freely the language of the court in the several cases, especially the more recent ones, in order to ascertain as distinctly as may be the "rule" in the abstract. It will be observed that instead of relaxation, the later cases cling with tenacity to the strict integrity of the contract, and repudiate all legislation which in effect impairs its force and value.

We think the rules deducible from the cases may be reduced to these formulæ:—

The obligation of a contract is the duty of performance according to its terms, the means of enforcement being a part of the obligation, which the states cannot by legislation impair. The municipal law enters into and forms part of this obligation; and to that, parties must be considered as referring in order to enforce performance.

Whilst the state may modify the remedy, it is under a duty, if it interferes at all, to provide a remedy as sufficient and substantial as that subsisting when the contract was made. The remedy is inseparable from the obligation, otherwise the contract would be of the nature of those imperfect obligations or moral duties subject to the mere caprice and will of individuals. Whilst the state is free to alter the remedy, to prescribe the modes of suit and process, it cannot clog it with conditions and restrictions so as materially to impair its efficiency.

We will recur to a few of the more pertinent cases in order to see the application of those principles to remedial laws called in question as impairing the contract.

In *Bronson* v. *Kinsie*, 3 How. 297, after the execution of the

mortgage in question, the legislature of Illinois passed a law requiring mortgaged property to bring two-thirds of its appraised value, and allowed to the mortgagor a year after the sale, to redeem. These new conditions upon the pre-existing remedy were held to impair the right. In *McCracken* v. *Hayward*, 2 How. 608, a law requiring property sold under execution to produce two-thirds of its appraisement was declared for the same reason to be inoperative and void. A law of Illinois allowed the city of Quincy to issue and negotiate coupon bonds, but required the city to levy a sufficient tax to pay the coupons. A subsequent legislature so restricted the power of taxation that enough money could not be raised to meet the obligations. The last law was held to be void: *Von Hoffman* v. *Quincy*, 4 Wallace. *Gunn* v. *Barry*, 15 Wallace, is essentially like the case here presented.

The Constitution of Georgia very largely increased the amount and value of property exempted from execution. The court held that the law manifestly impaired the obligation of the contract. In that case the creditor had reduced his debt to judgment, which was a lien upon the property. The law withdrew from liability a part of the property upon which the lien had attached. Whilst the court remark upon this fact, it is plain that the result would have been the same, had there been no judgment and lien when the law went into effect. In *Walker* v. *Whitehead*, not yet reported, after the contract in suit had been made, the legislature imposed certain taxes upon such choses in action, to be paid annually, and declared as a condition precedent to the right of suit, among other things, "that the said debt has been regularly given in for taxes, and the taxes paid;" held that these conditions impaired the obligation, and were void.

Most of the laws which have been condemned and declared invalid, operated upon the final process after judgment was obtained. The Illinois statutes were meant doubtless to prevent a sacrifice of the debtor's property; and only delayed the collection of the debt, if the property fell short of realizing two-thirds of its appraisement at its first offer for sale. But the creditor had a right to the absolute sale of the mortgaged premises, or of the property under execution when the contract was formed. These subsequent conditions embarrassed his remedy, rendering it substantially less valuable. If such laws may be set aside, what vindication can be made of a statute which withdraws altogether from liability twice

or thrice as much property as was exempted when the debt was contracted? The lesson of the adjudications is, that the creditor may trust to the law as it is when he contracts, to know how much of the estate of the debtor he may look to for satisfaction. The existing law is in the contemplation of both parties. That furnishes approximately a safe basis of credit. If subsequent law may come in, and deny satisfaction out of half the property before liable, it is too plain for argument or illustration, that such a statute seriously impairs the right.

There is hardly room for doubt that the greatly enlarged exemptions under the Act of 1865, come within the range and condemnation of these principles. This will be manifest by comparing the law of 1857 with that of 1865. The former exempted the lands and building occupied as a residence, not exceeding one hundred and sixty acres in quantity, and $1500 in value, including the improvements. The latter exempted 240 acres regardless of its value, so laid off as to include the dwelling-house and other buildings, and the farm. The homestead as thus defined, would in all probability equal half the value of the larger landed estates. Upon a critical examination it might perhaps turn out that half of the land estates of the freeholders of the state were placed entirely beyond the reach of creditors. It would embrace both in quantity and value more than half of the cultivated lands. The effect of the law in many instances is to free from debt property worth ten or twenty thousand dollars, to place many debtors in comparatively affluent circumstances beyond the reach of the smallest creditor. Credits predicated on the basis of the law of 1857 may be perfectly solvent, and yet by the Act of 1865 rendered insolvent. Such would be the consequences if the statute shall be construed to apply to pre-existing debts.

We would have no doubt or hesitation in declaring this statute void as to pre-existing debts, because of the inhibition of the Constitution, but for the embarrassment caused by the case of *Stephenson* v. *Osborne*, 41 Miss. 130. Mrs. Osborne as widow claimed the exempt personal property under the Act of 1865, her husband having died *since* its passage. This claim was contested upon the ground, as stated in the answer to her petition, that she had by a deed of separation from her husband renounced all her rights and claims upon his estate. It does not appear from the report that a concession of her demand would have injured the

creditors. It was conceded by her counsel in his brief, that the law was unconstitutional as to pre-existing creditors. Her right was predicated in argument on the fact that the estate was solvent, indebted not exceeding $500, and that her husband died *after* the law was in force. The question was not whether the law was void because it impaired the obligation of contracts; but rather whether the widow could take the personal property exempted by the statute in force at the death of the husband. It may not have been necessary to decide this question to pass upon the validity of the law as to prior creditors. What was said in argument by the court on the last point, entitled as it is to the highest respect and consideration, might be accepted as *dicta*. We are strongly inclined to the opinion that the enlarged homestead as defined in the Act of 1865 is prospective—allowable against after-incurred liabilities. By express words, the homestead, under the Act of 1857, may be claimed against future debts. The Act of 1865 imports by its title to be an amendment of the existing laws. That purpose is clearly set forth in the 7th section, "that this act shall be construed as amendatory of the exemption laws of this state, and not intended to repeal the said laws, otherwise than that the amendments shall supersede the former acts, so herein revised and amended." The amendments mainly are an increase and description of the property; and directions as to preferring the claim, and settling doubts as to the right claimed. The prospective feature of the former law is not repeated by express words. If accomplished at all, it is by implication. Such repeals are not favored nor tolerated except for inconsistency and repugnance. Courts ought to assume that the legislature have declared how far the repeal shall extend, and will not enlarge it by implication, unless there is plain inconsistency and incompatibility; moreover a statute should be so construed as that it may have effect. It is never to be inferred that the legislature intended to transcend the limits of its power. Statutes should be so interpreted if the language and subject-matter will admit of it, as to conform to the fundamental law. A rendering which will harmonize with the Constitution should be adopted, rather than one which shall be repugnant to it. In *Gunn* v. *Barry*, 15 Wallace, the intimation is strong, that the law of Georgia, which is much like our statute of 1865, was prospective in its effects—the state court, however, had decided otherwise.

Accepting the decisions of the Supreme Court of the United

States, as conclusive authority upon constitutional questions, we are constrained to the conclusion that the adjudications of that court condemn the increased exemptions of 1865, so far as prior creditors are affected, as violative of the Constitution. It was observed by the court in *Stephenson* v. *Osborne*, 41 Miss., that it had not met with an authority in which the constitutionality of exemption laws was raised and decided. Since that decision the case reported in 15 Wallace has been adjudged—and also a very well considered case reported in 22 Grattan 266.

To dissent from a former judgment pronounced in this court is always attended with serious embarrassment. It should never be done, until mature reflection had engendered the clearest conviction. But in cases like this we are subordinate to the Supreme Court of the United States; and must receive the expositions of the Constitution by that tribunal as authoritative and binding upon us.

As a court it is our duty to pronounce the law—we cannot, however, close our eyes to the consequences of our judgments; as they may affect the business and social interests of the community. We believe with confidence, that the conclusion to which we have come will promote public good. The principle vindicated, will give stability and uniformity to the business and industries of the people. Individuals in their dealings and transactions will be governed in their credits and liabilities by a surer and more permanent standard. It may serve to check somewhat the disposition to risky speculation; and inculcate a sterner morality to respect the inviolability of contracts.

It plainly teaches the lesson of self-reliance, and self-dependence, as a rule of conduct in business, and a better means of extrication out of embarrassments than periodic appeals to legislative power, to interpose for relief.

We are of the opinion that on the case made in the pleadings, Mrs. Phipps is entitled to a homestead exemption, to be assigned to her according to the provisions of the law of 1857 as to quantity and value, and that this assignment may be made in this suit.

The decree of the Chancery Court in sustaining the demurrer and dismissing the bill is reversed; the demurrer is overruled, and the cause remanded for further proceedings in accordance with this opinion.